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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1900~~ 1902.

No. ~~280~~ 13.

CHARLES STEWART, APPELLANT,

vs.

THE WASHINGTON AND ALASKA STEAMSHIP COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

FILED MAY 28, 1900.

(17,784.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 299.

CHARLES STEWART, APPELLANT,

vs.

THE WASHINGTON AND ALASKA STEAMSHIP COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 10, 1901.

1 In the United States District Court for the District of Alaska.

CHARLES STEWART, Complainant,
vs.
THE WASHINGTON AND ALASKA STEAMSHIP COMPANY, a Private Corporation, Organized and Existing by Virtue of and under the Laws of the State of Washington; Fredrick Dodwell, and H. C. Wallace, Defendants.

Bill.

To the judge of the United States district court for the district of Alaska:

Charles Stewart, a citizen of the State of Washington, brings this his bill against the Washington and Alaska Steam Ship Company, a private corporation, organized and existing under and by virtue of the laws of the State of Washington, having its principal office in the city of Tacoma, in said State, and Fredrick Dodwell and H. C. Wallace, citizens of said State of Washington; and thereupon your orator complains and says:

I.

That the complainant is a citizen of the United States.

II.

That the defendant The Washington and Alaska Steamship Company is a private corporation, organized and existing under
2 and by virtue of the laws of the State of Washington, and having its principal place and office of business in the said city of Tacoma, in said State, and said defendants, the said Fredrick Dodwell and said H. C. Wallace, are citizens of said State of Washington.

III.

That said defendant corporation is the owner and has control of and is the managing owner of and for a long time has been the managing owner of the steamship known and called the "City of Seattle," an American vessel, registered in the United States customs-house at the port of Tacoma, in said State of Washington, the said port of Tacoma being the home port of said steamship or vessel, the said steamship "City of Seattle" having a net tonnage of 767 tons, customs-house measurement, and that the said defendant corporation is the managing owner by and through its treasurer, the said Fredrick Dodwell, and by and through its president, the said H. C. Wallace, of the said steamship "City of Seattle;" which said president and treasurer of said corporation, as aforesaid, reside, each, at the said city of Tacoma, in said State of Washington, and which said president and treasurer of said corporation have power over and control of the business and affairs of the said defendant corporation, and especially with respect to the management and control

of the business relating to the said steamship "City of Seattle" generally.

IV.

That the said steamship "City of Seattle" is now employed by the said Washington and Alaska Steam Ship Company in the business of transportation of freight and passengers from the ports of Tacoma and Seattle, as well as from other ports on Puget sound, in the said State of Washington, and ports in and of British Columbia to Alaskan ports, the chief and almost entire business trans-
3 acted by the said steamship being the carrying of freight and passengers between the said ports of Puget sound and British Columbia and ports of Alaska; that in carrying on the said business, before the passage of the act entitled "An act to define and punish crime in the district of Alaska, and to provide a code of criminal procedure for said district," approved March 3, 1899, the said steamship carried on and did a coasting trade within the said district of Alaska, but the said steamship has not carried on any coasting trade or business within the said district of Alaska since the said act became in force in this district.

V.

Your orator further respectfully shows and alleges that he is a stockholder and owner of many shares of the capital stock of said defendant corporation, which said corporation derives its earnings and profits by reason of its business carried on between the ports aforesaid, and as such stockholder is entitled to his share of all the profits and proceeds of said business, as well as of the assets of said defendant corporation.

VI.

That the general control and management of the business and affairs of said defendant corporation is entrusted to the said defendants, H. C. Wallace, its president, and to said Fredrick Dodwell, its treasurer, both of said officers residing at the city of Tacoma, said State of Washington.

VI.

Your orator further says that the said defendant corporation, acting by and through said Wallace, its president, and said Dodwell, its treasurer, intends to, and unless restrained by an order of this court will, pay to the clerk of this court the sum of $767.00
4 of the money and funds belonging to said Washington and Alaska Steamship Company, of which company your orator is a stockholder, as aforesaid, for the purpose of obtaining a license to carry on a coasting trade and business within the district of Alaska, under the said act of Congress approved March 3, 1899, entitled "An act to define and punish crime in the district of Alaska, and to provide a code of criminal procedure for said district," and will further pay to said clerk of this court the sum of $5.00 for issuing the said license out of the funds and property belonging to said

defendant corporation, of which said corporation your orator is a stockholder, as aforesaid.

VII.

Your orator further states that no license is required of the said defendant corporation to carry on its said transportation and steamship business between the said ports; that the provisions of section 460 of the aforementioned act do not apply *and* to steamships or vessels plying between port- of the several State*d* of the United States and the district of Alaska and carrying on a general transportation and freighting business, but applies solely to ships or vessels doing only a coasting trade within Alaskan waters.

That the said steamship "City of Seattle" is subject to assessment and taxation and does pay, and the said defendant corporation does pay, tax on the said vessel upon such assessment at the port of Tacoma, said State of Washington, and is not subject to the payment of another tax within the district of Alaska.

That the provisions of said act requiring a license to be paid by said defendant corporation to enable the said steamship to carry on its said business, as aforesaid, within the district of Alaska,
5 constitute an unlawful discrimination against ships and shipping within the district of Alaska, and especially against the said steamship, said "City of Seattle," and is equivalent to taking the property of said defendant corporation without due process of law.

That the license tax of one dollar for each ton, ships' measurement, and to be paid annually, is exorbitant and excessive, and practically operates as taking defendant's property without due process of law.

VIII.

That the said act, to wit, "An act to define and punish crime, etc.," aforementioned, has no reference to the granting of a license for the prosecution of a lawful business, and the provisions, in so far as they purport to require the payment of a license fee or tax, are not within the scope of the said act; that the introductory clause of said act is vague, unintelligible, and doubtful, so that it cannot be reasonably inferred that the act intended to require the payment of any license tax or fee as the prerequisite of carrying on or doing a lawful business in said district of Alaska.

That sections 460 and 461 of said act are contrary to the Constitution of the United States and are null and void, and are especially contrary to the provisions of section 8 of article I and section 9 of article I of the said Constitution, and that said sections 460 and 461 impose a tax not uniform throughout the United States, and is a regulation of commerce making a preference of the ports of one State over the ports of another State, and require vessels bound to and from one State to pay duty in another.

And for the further reason that the said tax is not apportioned to the rights of the population of the citizens of the United States throughout the United States, but is a tax for national purposes

solely upon the citizens of the United States residing in a
6 particular State or district.

IX.

Your orator further shows that this suit is not a collusive one, but is brought in good faith, and while it is the duty and within the power of the said president and treasurer of said defendant corporation to honestly and fairly manage the business of said corporation and guard its welfare, and in the furtherance of said business to pay out and receive its money as may be necessary in the due course and conduct of such business, yet the said president and said treasurer managing and controlling the said business of said defendant corporation have no right to pay out and disburse money belonging to said corporation (in which your orator has an interest) which would be injurious to your orator and to his financial interest, and have no right to pay out the sum of $767.00 for a license tax or fee under the said act on behalf of the said steamship "City of Seattle;" that your orator has forbidden the payment of said tax, but the said president and said treasurer of said defendant corporation are determined and will, unless restrained by an order of this court, misappropriate and pay out of the funds of said corporation the said sum of $767.00 in the manner and for the purpose aforesaid.

X.

Your orator further says that unless the defendants, especially the said Wallace, president, and said Dodwell, treasurer, defendants herein, are restrained they will continue from year to year and from time to time — pay out and misappropriate the funds of said defendant corporation in the manner and in the form aforesaid and for the purposes hereinbefore stated, and greatly decrease the funds of said corporation, to the great and irreparable injury and loss to
your petitioner; and your orator further alleges that unless
7 the relief herein prayed for is granted and said act of Congress declared invalid your orator would be compelled to commence many suits for the purpose of maintaining his rights and the moneys and funds of said corporation would be wasted, misappropriated, lost, and destroyed in an amount in excess of $5,000.00, and your orator would thereby suffer irreparable loss and injury for which he has no plain, speedy, or adequate remedy at law, and in order to obtain the relief herein asked for, to wit, a temporary restraining order against the said defendants, and for the purpose of showing the good faith of your orator in the premises, so that your orator shall not be misconstrued, as attempting to avoid the payment of said license tax should the same be declared valid and constitutional by the Supreme Court of the United States, your orators, upon the order of this court, will deposit with the clerk of this court, to be held by said clerk, to abide the result of this litigation, in lieu of a bond for obtaining said restraining order, the sum of $767.00, in addition to the said clerk's fees and other costs.

Prayer.

Wherefore your orator humbly prays that this court may make and enter its order and decree enjoining the defendants and each of them, their agents and employés, and its officers from paying out (or applying) for said license tax any of the money of the said defendant corporation for the said steamship "City of Seattle," and that the defendants and each of them be enjoined and restrained by an order of this court from committing any of the acts complained of pending this suit, and that complainant have such other and further relief as may to the court seem equitable and just in the premises.

8 And may it please your honor to grant unto your orator the most gracious writ of subpœna, issued out of and under the seal of this honorable court, to be directed to the defendants and each of them, the said Washington and Alaska Steam Ship Company, H. C. Wallace, and Fredrick Dodwell, and commanding them and each of them that on a certain day and under a certain penalty to be there inserted they shall appear before this honorable court and then and there full, direct, and perfect answer make to all and singular the premises, and to stand to and abide and perform such order and decree as shall be made herein.

JOHN G. HEID,
Solicitors for Complainant.

THE UNITED STATES, }
District of Alaska. } *ss:*

A. S. Dautrick, being first duly sworn, deposes and says: I am the attorney-in-fact of and for the complainant, Charles Stewart; that I have read the foregoing petition or bill, and know the contents thereof; that the same is true, as I verily believe; the reason why this verification is not made by the complainant in person is that said complainant is not a resident of the said district of Alaska, and at present is not within said district, where I reside.

A. S. DAUTRICK.

Subscribed and sworn to before me this 31st day of October, 1899.

JOHN G. HEID,
[SEAL.] *Notary Public for Alaska.*

(Endorsed:) No. 1048. In the district court of the United States for the district of Alaska. Charles Stewart, plaintiff, *vs.* Washington and Alaska S. S. Co. *et al.*, defendants. Bill of complaint. Filed Nov. 7, 1899. Albert D. Elliot, clerk. John G. Heid, attorney for complainant.

9 And afterwards the following subpœna was issued in said cause and is in words and figures following, to wit:

In the District Court of the United States for the District of Alaska.

CHARLES STEWART, Complainant,
vs.
THE WASHINGTON & ALASKA STEAMSHIP COMPANY, a Private Corporation, Organized and Existing by Virtue of and under the Laws of the State of Washington; Frederick Dodwell, and H. C. Wallace, Defendants.

The President of the United States of America to the Washington and Alaska Steamship Company, Frederick Dodwell, and H. C. Wallace, Greeting:

You and each of you are hereby commanded that you be and appear in the said district court of the United States aforesaid, at the court-house, at Juneau, Alaska, on or before twenty days from the date of the service hereof upon you, then and there to answer a bill of complaint exhibited against you and each of you in said court by Charles Stewart, who is a citizen of the United States, residing in Alaska, and to do and receive that the said court shall have considered in that behalf; and this you are not to omit under a penalty of two hundred and fifty dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said [SEAL.] district court, this the 7th day of November, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-third.

ALBERT D. ELLIOT, *Clerk.*

You and each of you are hereby commanded to enter your appearance in the above suit on or before the twentieth day from the date of the service of the above subpœna upon you at the clerk's office of said court pursuant to said bill; otherwise the said bill will be taken *pro confesso.*

ALBERT D. ELLIOT, *Clerk.*

10 UNITED STATES, } ss:
Dist. of Alaska, }

I hereby certify that I received the within summons for service on Nov. 10th, 1899, and that I served the same at Juneau, Alaska, on Nov. 18th, 1899, by delivering a copy thereof, certified to, together with a copy of the complaint, prepared and certified by John G. Heid, plaintiff's attorney, to Emery Valentine, agent of Washington & Alaska Steamship Co., personally.

Dated at Juneau, Alaska, Nov. 18, 1899.

JAMES M. SHOUP,
U. S. Marshal.
By W. S. STALEY, *Deputy.*

Marshal's Fees.

1 service..... $2.00

Paid by pl'ff's att'y.

(Endorsed:) No. 1048. In the district court of the United States for the district of Alaska. Charles Stewart, plaintiff, *vs.* The Washington & Alaska Steamship Company *et al.*, defendants. Subpœna. Returned and filed Nov. 23, 1899. Albert D. Elliot, clerk. John G. Heid, attorney for complainant.

11 And afterwards the following motion was filed in said cause and is in words and figures following, to wit:

In the District Court of the United States for the District of Alaska.

CHARLES STEWART, Complainant,
vs.
THE WASHINGTON AND ALASKA STEAMSHIP COMPANY, a Private Corporation, Organized and Existing by Virtue of and under the Laws of the State of Washington; Frederick Dodwell, and H. C. Wallace, Defendants.

Comes now the complainant, by his attorney, John G. Heid, in the above-entitled cause, and moves the court to issue a restraining order or temporary injunction upon the hearing of this cause, and for grounds therefor shows that the defendant is purposing and intending and unless this order issues will make its application for a license, as set up in the complaint herein, and pay the money therefor specified to the clerk of this court, and the injuries set up and complained of in said bill of complaint will already have occurred, and the plaintiff's rights will be permanently lost if such payment is made.

This motion is based upon the sworn complaint herein filed.

JOHN G. HEID,
Solicitor for Complainant.

(Endorsed:) No. 1048. In the district court of the United States for the district of Alaska. Charles Stewart, plaintiff, *vs.* The Washington and Alaska Steamship Company *et al.*, defendants. Motion. Filed Nov. 7, 1899. Albert D. Elliot, clerk. John G. Heid, attorney for complainant.

12 And afterwards the following restraining order was made and entered of record in said cause and is in words and figures following, to wit:

In the United States District Court for the District of Alaska.

CHARLES STEWART, Complainant,
vs.
THE WASHINGTON AND ALASKA STEAMSHIP COMPANY, a Private Corporation, Organized and Existing by Virtue of and under the Laws of the State of Washington; Frederic Dodwell, and H. C. Wallace, Defendants.

On this 7th day of November, 1899, came on to be heard motion of complainant in the above-entitled cause for a restraining order

restraining the defendants and each of them from applying for and voluntarily paying the license tax of seven hundred and sixty-seven dollars, as alleged in complainant's complaint, and the court having considered said bill of complaint, together with said motion, and being fully advised in the premises—

It is ordered that the defendants and each of them, their officers and employés, be restrained from paying the license fee mentioned in said bill upon such application, but be allowed to pay said money into the registry of the court pending the hearing and final determination of the rights of the parties herein, and that upon said payment into the registry of the court in this cause any license applied for by the defendants be issued by the clerk of the court to the defendants, authorizing said defendant corporation to engage in and pursue the business specified in said license, the same to all intents and purposes as if said money had been paid upon said application.

It is further ordered that a copy of the complaint, motion, and of the proceedings herein be served upon the United States district attorney in and for the district of Alaska, and that he be given leave to appear and defend this cause in behalf of the United States.

Done in open court the day and year above written.

CHARLES S. JOHNSON, *Judge.*

(Endorsed:) No. 1018. In the district court of the United States for the district of Alaska. Charles Stewart, plaintiff, *vs.* The Washington and Alaska Steamship Company *et al.*, defendants. Order. Filed Nov. 7, 1899. Albert D. Elliot, clerk. John G. Heid, attorney for complainant.

13 And afterwards the following demurrer was filed in said cause and is in words and figures following, to wit:

In the District Court of the United States for the District of Alaska.

CHARLES STEWART, Complainant, *vs.* THE WASHINGTON AND ALASKA STEAMSHIP COMPANY, a Private Corporation, Organized and Existing by Virtue of and under the Laws of the State of Washington; Frederick Dodwell, and H. C. Wallace, Defendants.	Demurrer.

The Joint Demurrer of all the Above-named Defendants to the Bill of Complaint of Charles Stewart, Complainant.

These defendants, by protestation, not confessing any or all of the matters and things in the complainant's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, *doth* demur to said bill and for cause of demurrer show*eth* that the complainant hath not in and *for* his said bill made or stated such a case as entitles him in a court of equity to any relief

thereby sought and prayed for from or against these defendants or any of them.

Wherefore the defendants do*th* demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

LYONS & LYONS,
Counsel for Defendants.

I hereby certify that I am one of the solicitors and of counsel for the defendants in the above-entitled cause, and in my opinion the foregoing demurrer of the defendants to the bill of complainants is well founded in point of law and proper to be filed in the above cause.

T. R. LYONS,
Solicitor and of Counsel for Defendants.

14 UNITED STATES OF AMERICA, } ss:
District of Alaska, }

I, Emery Valentine, being first duly sworn, say that I am agent for the defendants in the within-entitled cause; that the foregoing demurrer is not interposed to delay the cause or any proceedings therein. The reason I make the verification is because the defendants and the officers of *of* defendant corporation are without the district of Alaska; that I have read the foregoing, know the contents thereof, and the same is true as I verily believe.

E. VALENTINE,
Ag't W. & A. S. S. Co.

Subscribed and sworn to before me this 24 day of November, 1899.

[SEAL.]

JOHN LYONS,
Notary Public for Alaska.

A copy of the foregoing demurrer in the within-entitled suit is accepted and service of the same hereby acknowledged this 24 day of November, 1899.

JOHN G. HEID,
Attorney for Complainant.

(Endorsed:) No. 1048. In the district court of the United States for the district of Alaska. Charles Stewart, complainant, *vs.* The Washington & Alaska Steamship Company *et al.*, defendants. Demurrer. Filed Nov. 24, 1899. Albert D. Elliot, clerk. Lyons & Lyons, attorney for defendants.

15 And afterwards the following opinion was rendered by the court in said cause and is in words and figures following, to wit:

In the District Court of the United States for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING CO.

JOHN W. ROBERTS
vs.
C. F. MEYERS ET AL.

CHARLES STEWART
vs.
THE WASHINGTON AND ALASKA STEAMSHIP CO.

And protests by—
The Alaska Steamship Co.
The Pacific Coast Co.
The Pacific Coast Steamship Co. (3).
The Pacific Steam Whaling Co.
The Alaska Packers' Association.

1. Injunction.—An injunction by one stockholder against the corporation to restrain the latter from applying for a license and paying the tax or fee imposed by law for conducting a business upon which the Congress has imposed such tax will not lie.
2. Practice.—Equity will not interfere where the parties have a plain and adequate remedy at law.
3. Same.—To induce a court of equity to take jurisdiction of a suit on the ground that a multiplicity of suits is threatened and irreparable injury thereby about to be sustained, the facts must be so plead that the court can reasonably infer that such allegations are true.
4. Protests.—A mere protest against the payment of a license tax on the ground that the law seeking to impose the same is unconstitutional will not give the court jurisdiction to try and determine the constitutionality of the law.

Malony & Cobb for Corbus.
M. E. McEnany for Alaska-Treadwell G. M. Co.
John R. Winn for Roberts.
F. D. Kelsey for Meyers *et al.*
John G. Heid for Stewart.
Lyons & Lyons for Washington & Alaska Steamship Co.
John R. Winn for the P. C. Co., P. C. S. S. Co., and P. S. W. Co.
Arthur K. Delaney for Alaska Packers' Association.
R. W. Jennings for the Alaska Steamship Co.
R. A. Friedrich, U. S. attorney, *amicus curia*.

16 JOHNSON, *District Judge:*

The following cases were at one and the same time argued and submitted to the court for decision and determination: A. W. Cor-

bus *vs.* The Alaska Treadwell Gold Mining Company, John W. Roberts *vs.* C. F. Meyer *et al.*, Charles Stewart *vs.* The Washington & Alaska Steamship Co., and protests against the payment of the license tax by the Alaska Steamship Co., the Pacific Coast Co., the Pacific Coast Steamship Co., the Pacific Steam Whaling Co., and the Alaska Packers' Association.

The object and purpose of each suit and each protest being the same—that is, to determine the constitutionality of the provisions of chapter 44 of the act of Congress of March the 3rd, 1899, entitled "An act to define and punish crime in the district of Alaska and to provide a code of criminal procedure for said district"—they may all be disposed of together. As to the forms of action, they may be divided into two classes. The first three are suits in equity, wherein a stockholder of the defendant corporation or a copartner of the defendant copartnership seeks to enjoin the corporation or copartnership from applying for license or paying the license fee or tax required by said act to be paid as a condition precedent to conducting their respective lines of business. The remaining cases are simple protests against paying the license tax imposed by law, principally on the ground that the same is unconstitutional, and praying that they may pay the amount of the license tax into the registry of the court, there to be held until the final action of the court on their protests. In each and all of the cases the license fee or tax has been paid to the clerk of the court, there to remain by order of the court until the final determination of these suits and protests.

In the case of Corbus *vs.* The Alaska Treadwell Gold Mining Company, the plaintiff seeks to enjoin the defendant corporation from paying the license tax imposed for operating certain quartz stamp mills and conducting a mercantile establishment. In Stewart *vs.* The Washington & Alaska Steamship Co., the injunction is sought for the purpose of restraining the payment of the license for an ocean and coastwise vessel doing local business for hire, plying in Alaskan waters, the property of the defendant corporation. Roberts *vs.* Meyer *et al.* is identical with the last-named case, except that the owner of the vessel in question is a company instead of a corporation, one member of which seeks to enjoin the other members. The protests of the Alaska Steamship Company, the Pacific Coast Steamship Co., and the Pacific Coast Company are against the payment of licenses on steamers and wharves, while the protests of the Pacific Steam Whaling Co. and the Alaska Packers' Association are directed against the license imposed for operating steamboats and canning and salting salmon in Alaska.

To each of the three bills a demurrer to the equity thereof was interposed by defendants. The attorneys for the defendants, however, made no arguments and filed no briefs in support of their respective demurrers. Copies of the bills having been served upon the district attorney, he asked and obtained leave of the court to appear as *amicus curiæ*, and in that capacity and disclaiming any intention to in any manner represent or bind the United States, he denied that the court had any jurisdiction under any of the forms

of action presented to hear and determine the cases upon their merits. He denied the right or power of the court to enjoin the defendants in any case from paying the license in question, and he also argued in support of the constitutionality of the law, and offered a brief in support of both contentions.

17 It is necessary, then, to first ascertain whether the court has jurisdiction under the pleadings in any of these cases to try and determine the constitutionality of the law in question.

In the three equity suits the plaintiffs rely largely, if not wholly, upon the case of Pollock *vs.* Farmers' Loan & Trust Co., 157 U. S., 229, and 158 *id.*, 601. It is contended that the suits at bar are identical with the Pollock case, and that the Supreme Court having in that case decided that a stockholder might enjoin a corporation from paying a tax alleged to be unconstitutional that this court is bound thereby in these cases. If it be conceded that the cases are identical, and that the decision in the Pollock case is entitled to the breadth of construction contended for by plaintiff's counsel, then it it will not be denied that this court is bound thereby; but are the cases identical? We think not. An examination of the bills before us discloses the existence of corporations and a copartnership formed for the simple purpose, in the one instance, of mining and milling ores for the precious metals therein contained, and, in the other two cases, for operating steamers in Alaskan waters as common carriers. It is not claimed that any trusts have been committed to the respective defendants, their only obligation and duty being to their stockholders, and the threatened multiplicity of suits is charged as "suits and prosecutions for the violation of said act," and the irreparable injury threatened and complained of would be incurred by "defending said suits and avoiding the fines and forfeitures provided by said act." In Pollock *vs.* Farmers' Loan & Trust Co., the bill alleged "that under and by virtue of the powers conferred upon the company it had, from time to time, taken and executed and was holding and executing numerous trusts committed to the company by many persons, copartnerships, unincorporated associations, and corporations, by grant, assignment, devise, and bequest, and by orders of various courts, and that the company now hold, as trustee for many minors, individuals, copartnerships, associations, and corporations, resident in the United States and elsewhere, many parcels of real estate, situated in the various States of the United States, and amounting in the aggregate to a value exceeding five millions of dollars, the rents and income of which real estate, collected and received by said defendant in its fiduciary capacity, annually exceeded the sum of two hundred thousand dollars." The bill further shows "that voluntary compliance with the income-tax provisions would expose the company to a multiplicity of suits, not only by and on behalf of its numerous shareholders, but by and on behalf of numerous minors and others for whom it acts in a fiduciary capacity."

Other radical differences appear between the bills under consideration and that in Pollock *vs.* Farmers' Loan & Trust Co., but these are sufficient of themselves to place the two on an entirely different

footing. Indeed, it was because of these allegations in the bill in the Pollock case, and which are not found in the bills before us, that the Supreme Court determined it had jurisdiction in that case. The language of the syllabus, which embodies the judgment of the court upon that point, reads as follows: "Such a bill being filed by a stockholder to prevent a trust company from voluntarily making returns for the imposition and payment of a tax claimed to be unconstitutional, and on the further ground of threatened multiplicity of suits and irreparable injury, * * * the court will proceed to judgment on the merits."

A mere allegation in the bill that a multiplicity of suits is threatened is not sufficient to induce a court of equity to take jurisdiction of the suit. The facts must be pleaded in such manner that the court can reasonably infer that such danger is threatened and such suits liable to be brought. This is not only sound in princi-

18 *pal*, but is sustained by the authorities. Schulenberg-Boeckeler Lumber Co. *et al. vs.* Town of Hayward *et al.*, 20 Fed. Rep., 422. An examination of the bills before us, in the light of the law governing the matters complained of, discloses the fact that no such multiplicity of suits and no such irreparable injury as is contemplated in law or in equity is threatened or is possible.

But we do not concede that even in the Pollock case the Supreme Court holds that the plaintiff, as a matter of course, had the right to enjoin the defendant from paying the tax alleged to be unconstitutional. The chief justice, in passing upon this feature of the case, uses this language: "The objection of adequate remedy at law was not raised below, nor is it now raised by appellees, if it could be entertained at all at this stage of the proceedings, and, so far as it was within the power of the Government to do so, the question of jurisdiction, for the purposes of this case, was explicitly waived on the argument."

The court was induced to some extent, no doubt, to hear the case upon its merits on the ground of public policy. At least Assistant Attorney General Whitney was constrained to waive all objections to the form of action on that ground, as is evidenced by the following language used by him in his argument of the case: "The method by which the questions are presented in the Pollock & Hyde cases was not chosen with the consent of the Government; the corporations have ample remedy at law, either by standing on the defensive or by paying the tax under protest and suing to recover the amount paid. Plaintiffs would be sufficiently protected by decree restraining the corporations from voluntary payment. Yet the bills do not allege that the corporations intend to pay voluntarily. No injunction, it is believed, has ever been granted against the payment of a tax to the United States Government or against the execution of a law of the United States on the ground that the law is unconstitutional. It is believed that in no case can such an injunction properly be granted, and it is regarded as important not to break the chain of precedent against such relief. These objections, however, are not jurisdictional in the strictest sense. * * * In

view of the great public interest aroused, and of the fact that no cases in proper form are now pending, these objections are waived on behalf of the Government, so far as it is in the power of its officers to waive them."

It can avail nothing for me to here quote from the very able dissenting opinion of Justices White and Harlan on this branch of the Pollock case. Their opinion, with authorities cited, leads me to the conclusion that had the question of jurisdiction been raised in the court below and insisted upon in the Supreme Court the case would not have been heard upon its merits; and in the cases at bar the district attorney, so far as he had the right to do so, the Government not being a party to the suits, raised not only the question of the jurisdiction of the court because the plaintiffs had a plain, speedy, and adequate remedy at law, but insisted that the suits were of a friendly nature, collusive in character, and brought for the sole purpose of conferring jurisdiction upon the court to the end that the defendants might escape paying the license fee imposed by law, and when all the facts are taken together as disclosed by the record some color is lent to the latter contention. Take the case of Corbus *vs.* The Treadwell Co., the bill was filed July 17th, the subpœna served July 19th, commanding the defendant to answer the bill within twenty days. No appearance was made by defendant, however, and no pleading filed until November 15th, nearly four months after the filing of the bill, and not until about the time the matter was called up for hearing, when a demurrer was interposed. Counsel for defendant did not contend for his demurrer, made no argument, and filed no brief in support of the same, and in the very

19 nature of the case the interests of the plaintiff and defendant are identical. Then if the object and purpose of the suit is solely to test the constitutionality of the law without first paying into the United States Treasury the amount of the license tax, and there can be no other object, and if the court will sustain the plaintiff and enjoin the defendant as prayed, how is the private citizen to avail himself of a similar remedy? Who shall enjoin him and save him from paying his tax until the constitutionality of the law is determined? And if he cannot avail himself of this manner of suit, why should corporations or copartnerships be permitted to do so? Why should not corporations and individuals have and be permitted to exercise identically the same legal rights and remedies under the law?

It is admitted in all the bills and protests now being considered that the respective plaintiffs have a plain remedy at law by resisting the enforcement of the statute in question. But they contend that the fines and penalties imposed are so severe they dare not pursue that course. When the Congress passed the law in question they also passed and made a part of this very chapter 44 the following provision, found in section 481:

"That in any case where a conviction occurs except in a case of murder or rape, the court may, when in its opinion the facts and circumstances are such as to make the minimum penalty provided in this act manifestly too severe, impose a less penalty, either of fine

or imprisonment, or both. Provided, that in any such case the court shall cause the reasons for its action to be set forth at large on the records in the case."

It would seem that Congress had in view the provisions in this very chapter, for the minimum penalty in all other criminal cases is extremely low; and while it is not a part of the record of this case, it is a fact well known to every attorney appearing in these cases that the court has repeatedly exercised the power by that section vested in it, and has imposed a minimum fine of but one dollar in many cases arising under the provisions of this chapter. In view of the existence of this law the plaintiffs can have nothing to fear from the severe penalties imposed, if they are acting in good faith and with an honest purpose to test the constitutionality of the law, intending if the same shall be sustained to then comply with its provisions.

As to those persons appearing by protests only, it is the anomalous contention that the papers on file are both applications for and protests against the issuance of licenses—that is to say, they are applications for license if the court shall determine that the business engaged in by the plaintiffs respectively subject them to the payment of a tax, and they are protests on the ground that the several lines of business engaged in by the protestants are not subject to license and taxation, principally because the law attempting to impose the tax is unconstitutional and void. It is further contended by them that in passing upon all applications for a license under this law the court acts judicially, and therefore has the right to and must pass upon the constitutionality of the law itself. It is not necessary to determine whether in passing upon applications for license the court acts judicially, for, if we concede that it does so act, it is nevertheless perfectly clear that the petitioner can only allege in his petition those things required by the act itself to be set up showing the applicant to be entitled to the license prayed for, and if extrinsic matter is pleaded, such as denying the constitutionality of the law itself, the court is not required nor, in our judgment, permitted to take judicial notice of such extrinsic matter. An officer authorized to issue marriage licenses may be said to act judicially in determining whether the facts set up by the applicant for such license entitles him to receive the same, but it would hardly be contended that the applicant could deny the constitutionality of the law governing such matters, and require the officer to determine that question.

If this were a court of last resort we might feel constrained to seek some means by which the constitutionality of the law might be passed upon. The issue should be settled at the earliest possible moment, but we are powerless to finally settle it, even if we would, and we do not believe the question is legally before us. The giving to every one who may feel himself aggrieved the right to enjoin payment of a tax imposed upon him by the Congress is fraught with so much danger and it is so at variance with the policy of our Government and the decisions of our courts that we do not

feel warranted in seeking for reasons to justify the taking of jurisdiction in these cases, even if any could be found.

The demurrers to the three bills will be sustained; and as to the protests, in so far as they can be construed as an application for license for the respective businesses named, they will be sustained. The protests will be ignored, and unless an appeal shall be taken from the decree rendered in conformity with this opinion within the time prescribed by law, the clerk will be directed and ordered to pay into the United States Treasury the several sums of money paid into the registry of this court by the respective complainants and protestants. Let a decree be entered in conformity herewith.

(Endorsed:) Opinion of court. Filed Dec. 30, 1899. Albert D. Elliot, clerk.

21 And afterwards the following order & decree was made and entered of *of* record in said cause, to wit:

In the District Court of the United States for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA TREADWELL GOLD MINING CO. } No. 976.

JOHN W. ROBERTS
vs.
C. F. MEYERS ET AL. } No. 978.

CHARLES STEWART
vs.
THE WASHINGTON & ALASKA STEAMSHIP CO. } No. 1048.

And protests by—
The Alaska Steamship Co.
The Pacific Coast Co.
The Pacific Coast Steamship Co.
The Alaska Packers' Association.
The Pacific Steam Whaling Co.

Decree.

The above-mentioned suits and protests came on regularly to be heard at the adjourned November, 1899, term of this court, at Juneau, in said district. By consent of counsel, all of said suits and matters were heard and argued together and at one time. All and each of said suits and protests were argued by counsel, and therefore, the court being fully advised, and after due consideration thereon, it is ordered, adjudged, and decreed by the court that in the cases of A. W. Corbus *vs.* The Alaska Treadwell Gold Mining Co., John W. Roberts *vs.* C. F. Meyers *et al.*, and Charles Stewart *vs.* The Washington & Alaska Steamship Co., and in each of them, the demurrers are sustained, and that the bills in said cases and each

of them be, and the same are hereby, dismissed with costs in each case against the plaintiff, to be taxed by the clerk.

And in each of said suits in which defendants have deposited with the clerk of this court a sum equal to the amount required by law for a license to conduct the business in which said defendant is engaged the clerk of this court is hereby directed to issue such license and cover said sum or sums of money into the Treasury of the United States unless an appeal be taken within sixty days.

In the matter of the protests of The Alaska Steamship Co., The Pacific Coast Co., The Pacific Coast Steamship Co. (3), The Pacific Steam Whaling Co., The Alaska Packers' Association, where the same can be construed into an application for a license under the law for conducting the several businesses therein described, the clerk is directed to issue such license in each instance and turn said sums of money into the Treasury of the United States. So far as said protests seek relief against the payment of a license on the several businesses therein described, the same is overruled, denied, and ignored in each case of protest.

This order and decree will be entered by the clerk in each suit and in the matter of each protest.

CHARLES S. JOHNSON,
U. S. District Judge.

(Endorsed:) Order & decree. Filed Jan. 2, 1900. Albert D. Elliot, clerk.

22 And afterwards, on Feb. 15, 1900, the following order was made and entered of record in said cause, to wit:

CHARLES STEWART, Pl'ff, *vs.* THE WASHINGTON & ALASKA STEAMSHIP Company, a Private Corporation, etc. *et al.*, Def't.	No. 1048. Order Extending Time on Writ of Error.

Upon the motion of John G. Heid, Esq., attorney for plaintiff, in open court:

It is ordered by the court that plaintiff have thirty days additional within which to sue out a writ of error to the Supreme Court of the United States in the above-entitled cause to the time heretofore granted for such purpose.

23 And afterwards the following motion was filed in said cause and is in words and figures following, to wit:

In the United States District Court for the District of Alaska.

CHARLES STEWART, Complainant,
vs.
THE WASHINGTON AND ALASKA STEAMSHIP COMPANY, a Private Corporation, Organized and Existing by Virtue of and under the Laws of the State of Washington; Frederick Dodwell, and H. C. Wallace, Defendants. } Motion.

Comes now the above-named complainant, by John G. Heid, his attorney, and moves the court for further time, to wit, until the 1st day of May, 1900, within which to perfect his appeal herein.

JOHN G. HEID,
Attorney for Complainant.

Service of a copy of the within motion is hereby admitted, at Juneau, Alaska, March 26th, 1900, and time of notice waived.

LYONS & LYONS,
Attorneys for Defendants.

(Endorsed:) No. 1048. In U. S. dist. court, district of Alaska. Charles Stewart, plaintiff, *vs.* The Washington & Alaska S. S. Co. *et al.*, defendants. Motion. Filed March 30, 1900. Albert D. Elliot, clerk.

24 And afterwards the following order was made and entered of record in said cause, to wit:

In the United States District Court for the District of Alaska.

CHARLES STEWART, Complainant,
vs.
THE WASHINGTON AND ALASKA STEAMSHIP COMPANY, a Private Corporation, Organized and Existing by Virtue of and under the Laws of the State of Washington; Frederick Dodwell, and H. C. Wallace, Defendants. } Order.

This cause coming on to be heard on motion of complainant for further time within which to perfect his appeal herein:

It is hereby ordered that the complainant have, and he hereby is granted, further time until the first day of May, 1900, within which to perfect his appeal herein.

CHARLES S. JOHNSON, *Judge.*

(Endorsed:) In U. S. dist. court, district of Alaska. No. 1048. Charles Stewart, complainant, *vs.* The Washington & Alaska S. S. Co. *et al.*, defendants. Order. Filed March 30, 1900. Albert D. Elliot, clerk.

25 And afterwards the following notice of appeal was filed in said cause and is in words and figures following, to wit:

In the District Court of the United States for the District of Alaska.

CHARLES STEWART, Plaintiff,
vs.
THE WASHINGTON & ALASKA STEAMSHIP COMPANY, a Private Corporation, Organized and Existing by Virtue of and under the Laws of the State of Washington; Frederick Dodwell, and H. C. Wallace, Defendants. } Notice of Appeal.

To the Washington & Alaska Steamship Company, a private corporation, organized and existing by virtue of and under the laws of the State of Washington; Frederick Dodwell, and H. C. Wallace, and Lyons and Lyons, their attorneys:

You and each of you will please take notice that the above complainant, conceiving himself aggrieved by the ruling, decision, and decrees of the above-entitled court in the above entitled matter and case, all of which were objected to, excepted to, and the same allowed by the court, and by the decision and opinion made and filed by the said court in the said matter on the 2nd day of January, 1900, and the order and judgment on the same day entered thereon in the above-entitled court and filed herein in favor of the defendants and against the plaintiffs in said cause, does hereby appeal from said decision, order, and said judgment, decree, and ruling to the Supreme Court of the United States, and the said plaintiff and complainant pray that its appeal be allowed and that a transcript of the record, rulings, proceedings, and papers upon which said final order, judgment, and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Sitka, Alaska, March 30, 1900.

JOHN G. HEID,
Attorney for Complainant.

SITKA, ALASKA, *March 30th*, 1900.

And now, on this 30th day of March, 1900, it is ordered that the appeal be allowed as prayed for.

CHARLES S. JOHNSON, *Judge.*

A copy of the foregoing notice of appeal received this 17th day of April, 1900, and service of the same admitted.

ROBERT A. FRIEDRICH,
U. S. Attorney.

LYONS & LYONS,
Attorneys for Defendant.

(Endorsed:) No. 1048. Original. Charles Stewart, plaintiff, *vs.* The Washington & Alaska S. S. Co. *et al.*, defendants. Notice of appeal. Filed Apr. 17, 1900. Albert D. Elliot, clerk.

26 And afterwards the following bond on appeal was filed in said cause and is in words and figures following, to wit:

In the District Court of the United States in and for the District of Alaska.

CHARLES STEWART, Plaintiff,
vs.
THE WASHINGTON AND ALASKA STEAMSHIP COMPANY, a Private Corporation, Organized and Existing by Virtue of and under the Laws of the State of Washington; Frederick Dodwell, and H. C. Wallace, Defendants.
} Bond on Appeal.

Know all men by these presents that we, Charles Stewart, as principal, and P. G. Copeland, of Juneau, Alaska, as surety, are held and firmly bound unto the above-named defendants and each of them in the sum of $250.00, to be paid to them or either of them; *and* which payment, well and truly — be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this — day of March, 1900.

Whereas the above-named plaintiff, Charles Stewart, has appealed to the United States Supreme Court, at Washington, from a decree and judgment in favor of the above-named defendants made and entered on the 2nd day of January, 1900, in the above-entitled case by the district court of the United States for the district of Alaska to reverse said judgment and decree so rendered;

Now, therefore, the condition of the above obligation is such that if the above plaintiff, Charles Stewart, herein shall prosecute said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

CHARLES STEWART.
P. G. COPELAND.

UNITED STATES, }
District of Alaska, } *ss:*

I, P. G. Copeland, being first duly sworn, on oath depose and say that I am the surety mentioned on the foregoing and within bond on appeal; that I am a resident of the district of Alaska and worth the sum of $500.00 over and above all my just debts, liabilities, and property exempt from execution under the laws of the district of Alaska.

P. G. COPELAND.

Subscribed and sworn to before me this 30th day of March, 1900.
[SEAL.] JOHN G. HEID,
Notary Public.

The foregoing bond approved this 30th day of March, 1900.
CHARLES S. JOHNSON, *Judge.*

(Endorsed:) No. 1048. Charles Stewart, plaintiff, *vs.* The Washington & Alaska S. S. Co. *et al.*, defendants. Bond on appeal. Filed April 17, 1900. Albert D. Elliot, clerk.

27 The appeal in the foregoing and entitled proceedings is hereby allowed. Dated this 30th day of March, 1900.

CHARLES S. JOHNSON, *Judge.*

The foregoing and hereto attached bill of exceptions examined and allowed. Dated this 30th day of March, 1900.

CHARLES S. JOHNSON, *Judge.*

And afterwards the following citation was issued in said cause, and is in words and figures following, to wit:

28 In the District Court of the United States for the District of Alaska.

CHARLES STEWART, Complainant,
vs.
THE WASHINGTON & ALASKA STEAMSHIP COMPANY, a Private Corporation, Organized and Existing by Virtue of and under the Laws of the State of Washington; Fredrick Dodwell, and H. C. Wallace, Defendants.

The President of the United States of America to the Washington & Alaska Steamship Company, a corporation; Fredrick Dodwell, and H. C. Wallace, Greeting:

You and each of you are hereby cited and admonished to be and appear at the United States Supreme Court, Washington, D. C., on the second Monday in October, 1900, pursuant to an appeal filed in the clerk's office of the district court of the United States for Alaska, wherein Charles Stewart is complainant and appellant and you are defendants and respondents, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, the 30th day of March, 1900.

CHARLES S. JOHNSON,
Judge of the District Court of the United States for Alaska.

Attest: ALBERT D. ELLIOT, *Clerk.*

[Seal United States District Court, Alaska.]

Service of the within citation and a receipt of a copy thereof admitted this seventeenth day of April, 1900.

ROBT A. FRIEDRICH,
U. S. Attorney.

LYONS & LYONS,
Attorneys for Defendants.

[Endorsed:] No. 1048. Charles Stewart, complainant, *vs.* The Washington & Alaska S. S. Co. *et al.*, defendants. Original citation. Filed Apr. 17, 1900. Albert D. Elliot, clerk.

29 And afterwards the following stipulation was filed in said cause, and is in words and figures following, to wit:

In the District Court of the United States for the District of Alaska.

A. W. CORBUS)
vs.
THE ALASKA TREADWELL GOLD MINING CO.)

JOHN W. ROBERTS)
vs.
C. F. MEYER ET AL.)

CHARLES STEWART)
vs.
THE WASHINGTON & ALASKA STEAMSHIP CO.)

And protests by—
The Alaska Steamship Co.
The Pacific Coast Steamship Co.
The Pacific Coast Co.
The Pacific Steam Whaling Co.
The Alaska Packers' Association.

It is hereby stipulated and agreed by and between the solicitors and attorneys of A. W. Corbus, John W. Roberts, Charles Stewart, the above-named plaintiffs and complainants, and the protestants, The Alaska Steamship Co., The Pacific Coast Steamship Co., The Pacific Coast Co., The Pacific Steam Whaling Co., and the attorneys and solicitors for The Alaska Treadwell Gold Mining Co., C. F. Meyers *et al.*, The Washington & Alaska Steamship Company, and Robert A. Friedrich, United States district attorney for Alaska, that at the time of the rendition of the opinion and the signing and filing and rendition of the final decree in said cause that an exception was asked and allowed to the same and each of the same, but by mistake was not entered of record, and it is hereby stipulated and agreed that the exception may be entered of record as of January 2nd, 1900.

30 JOHN R. WINN,
Att'y Pacific Coast Co., P. C. S. S. Co., and Pacific Steam Whaling Co.
F. P. KELSEY,
Attorney for F. C. Meyer et al.
MALONEY & COBB,
Solicitors for A. W. Corbus.
M. E. McENANY,
Solicitor for the Alaska Treadwell Gold Mining Co.
LYONS & LYONS,
Att'ys for Washington & Alaska S. S. Co.
ROBERT A. FRIEDRICH.
J. G. HEID,
Attorney for Complainant, Chas. Stewart.

The foregoing exception was asked by the respective parties in interest and against whom the said opinion was rendered and said decree entered at the time and in the manner indicated in the foregoing stipulation.

CHARLES S. JOHNSON,
The Trial Judge, Now ex-Judge of the Above-entitled Court.

(Endorsed:) Stipulation. Filed Apr. 17, 1900. Albert D. Elliot, clerk.

31 UNITED STATES OF AMERICA, } ss:
District of Alaska, }

Clerk's Certificate.

I, Albert D. Elliot, clerk of the district court of the United States of America for the district of Alaska, do hereby certify that the foregoing pages numbered from one (1) to thirty (30), inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Charles Stewart, complainant, *vs.* The Washington and Alaska Steamship Company, a private corporation, organized and existing by virtue of and under the laws of the State of Washington; Frederick Dodwell, and H. C. Wallace, defendants, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of said court to be hereunto affixed, at the town of Sitka, in said district, the 10th day of May, A. D. 1900.

[Seal United States District Court, Alaska.]

ALBERT D. ELLIOT, *Clerk.*

32 [Endorsed:] No. 1048. Charles Stewart *vs.* The Washington and Alaska Steamship Company, a private corporation organized & existing by virtue of and under the laws of the State of Washington; Frederick Dodwell, & H. C. Wallace. Transcript on appeal.

Endorsed on cover: File No. 17,784. Alaska D. C. U. S. Term No. 299. Charles Stewart, appellant, *vs.* The Washington and Alaska Steamship Company *et al.* Filed May 28th, 1900.